

## FORBES' EXPENSE FUND TORPEDOED BY JUDGE STUART

(Continued from page one)

sat Attorney-general J. M. Stainback and his deputy, Arthur G. Smith, representing the territory, also Robert W. Breckons, attorney for Wilder, and Wilder himself.

Stainback asks interlocutory appeal. Attorney-general Stainback was evidently much moved with the decision, raising as soon as the judge had finished to ask for an interlocutory appeal. The appeal was denied, however, Judge Stuart declaring that the supreme court objects to such action.

Then both territorial attorneys asked for time in the case of Treasurer McCarthy, stating that he is absent on the mainland and that he alone was familiar with the details of his case. Stainback declared that Wilder had asked for some postponement in regard to it when McCarthy had been in the territory.

"Falseness," shouts Wilder. "That's an absolute falseness," shouted Wilder across the few feet of space that separated them at the table, and hot words from both parties ensued.

As the two men passed out from the court room Stainback informed Wilder that he objected to having his veracity questioned in such a manner, at which the latter replied, "You can go to —, then."

Attorney Breckons stepped between the two men as they passed out of the corridor with loud words, a crowd gathering hastily from all corners of the judiciary building in expectation of more serious trouble.

Stuart's decision is a veritable essay of 21 pages, which goes into the history of the case, the arguments on both sides, the cases cited by each, and finally ends with a decision, "each of the demurrers should be overruled and it is so ordered and adjudged."

As the judge finished reading his long list of court decisions he paused, cleared his throat, and began on his final words.

"I take it," he said, "that no one will deny that a public office is a public trust, and that in the administration of it, and the handling of the funds that belong to it, the trustee is held to strict accountability."

"He must place his finger upon the law that authorized him to pay out public funds. Nothing is taken by indictment except that which is embraced within the plain letter of the law. It is not left to the discretion of any public officer as to how he will use public funds."

"Public morals are at a low ebb when officers conceive the idea that they can pay out public funds according to their whims until the appropriation is exhausted. Some of them assume that they may take joy rides over the country and hold tugs at the expense of the taxpayers. Nothing is further from the truth than such a proposition. Necessity must be behind and enforce the paying out of every dollar of public funds that is paid out by them, absolute necessity in the performance of their sworn duties."

"Where the payment of the fund is for and on behalf of a matter wholly unknown to its appropriation, or for an illegal purpose, or a corrupt purpose, or a purpose contrary to public policy, I take it that the officer may be enjoined at any time by any taxpayer who is endangered by the unlawful acts and threats of such officer. There is a class of cases where there is a continued action contemplated by the same or different officers in mat-

ters upon which they have the right to adjudicate and the right to use a discretion."

"In this class of cases, the courts are slow in issuing injunctions, but in a case where the officers paying out the money have no discretion whatever, where the threatened payment is absolutely in contravention of the law, and would be no more authorized by the language of the act than the buying of 25-inch guns for our Territorial Navy, courts do not temporize in the matter."

Blocking Contemplated Action. As to the argument of the defense that the bringing of the cases was premature, and that threats alone will not justify the granting of an injunction, the judge recalled that the actual payment of the money would have required only a short time after the parties began to act.

He declared that the making out and filing of a claim was a very distinct step in the wrongful act, as was also the consideration of such claims by officers, the declaration by officers that they would allow and pay the claims.

Not Contended As Legal. "It is not seriously contended by the defendants," Judge Stuart continued, "that such contemplated action is legal. As regards the acts of the governor, the attorney general refused to justify them in any respect, or to argue the demurrer."

"As regards the other expenditures of money, no citation of any authority has been made that would justify it. If Mr. Forbes has the right to travel on the mainland at public expense, so does every other member of the board that he belongs to have the same right. He and the other members cannot make any contract that would bind the board when they are thus acting separately. And when they would get through their travels, then they would all have to go together to make a contract, even if they could make a contract outside of the territory."

"Mr. Forbes has no right to contract with himself as a member of either of these boards. Where traveling is spoken of, as for instance, where agents must be sent to the mainland, I take it that it means the agents and engineers that the board is entitled to employ outside of its own membership. To adopt a different construction would establish a leakage of public funds that would be ruinous."

To Judge requested that Attorney General Stainback had not seen fit to bring the actions into court, but since he had not done so, having instead defended the territorial officials in the case, stated that he believed the matter would never have been brought save by Judge Wilder or some other citizen.

"I think that Mr. Wilder is entitled to much credit for taking upon himself the burden of defending the public treasury," he said. Slowly and carefully Judge Stuart read as he cited his last supreme court decision.

"We trust that the time will never come in Hawaii when taxpayers shall not care to seek by appropriate proceedings in court to avert unlawful uses of public money in connection with an unconstitutional statute."

Refers to "Poverty of Courts." In concluding his decision Judge Stuart referred to the fact that men are now being held in prison awaiting trials long overdue, because of the poverty of the courts.

"It seems proper," he said, "as we are considering the objections of the attorney general, and the contingent fund appropriation of \$50,000 controlled by the governor for urgent needs for which no specific appropriation or an insufficient specific appropriation is made, to call attention to the condition of the circuit court in this judicial circuit."

"It is declared that we are entirely out of money to pay ordinary running expenses, including the per diem of jurors. The courts have been virtually closed for months, in which time

## MURPHY WILL PROBE PROXY VOTE ON MAUI

Seventeen Persons Cast 55 Ballots, Wilson Hears; May Have Thought System O. K.

Attorney Eugene Murphy of Walla Walla is to make a personal investigation of alleged fraud in connection with the Democratic direct primary election held in Hana, Maui, last Saturday, according to advices received today by J. H. Wilson, national committeeman.

Murphy expects to visit Hana within the next few days and get sworn statements and affidavits from persons said to have information regarding a system of voting by proxy which, it is claimed, was resorted to by several representatives of Dr. J. H. Raymond, defeated candidate for delegate to the Democratic national convention. Murphy intends to present these statements to the Maui county committee, which also may probe the matter.

According to Wilson, just 17 persons voted at the polls at Hana, a total of 55 votes being cast, one being thrown out. Of this number, 32 were in favor of Raymond.

"The Raymond men," Wilson says, "do not deny that they voted by proxy, but they may contend that they had a right to do so. However, I do not believe there was any fraud in connection with the election. I believe that it was done through ignorance of the party rules. Those who voted by proxy are making 'no bones' about it. I guess they thought they had a right to vote that way. However, there is to be an investigation."

Dr. J. H. Raymond, defeated candidate for delegate from Maui to the national Democratic convention, and whose name has been mentioned in Pualahi street in connection with the alleged fraud in the primary election on the Valley Island, declares that he is not a Pinalahi man, but his own man, and that "I want to impress this, strongly upon everybody."

He declares that if the Maui county committee counts him in the election as delegate, he will nevertheless go to the convention at St. Louis and protest against those sent there in his place. He adds that he did not "run away from Maui" but that he came to Honolulu to arrange for the shipment of a bunch of cattle.

What Pinalahi, the Hawaiian who is alleged to have voted 35 times by proxy, did at Paila, Doctor Raymond says he does not know.

"We did nothing in the election that was not straightforward and above-board," he adds. "I did pay William Coelho \$15 to translate for me at the meetings at Wailuku and Lahaina when I spoke. He was not sent to Maui to do politics, but was there on business."

They could have entirely cleared their dockets of jury cases.

"Persons charged with crime are held in jail and deprived of trial. All jury trials are continued. The conditions could not be worse. Perhaps a taxpayer could not gain for us the relief we need, but would not an action by the attorney general in the higher court gain for our courts a necessary amount of this fund to enable them to be kept open and discharge their duty?"

"We would surely feel thankful to the attorney general if he would try it. It may be that this might stop the further enlistment of Filipinos for the present, but even in that case would it not be justifiable?"

## CHAMBER OF COMMERCE TRANSACTS BUSINESS

The interest in the Stevens scale price bill seems to have died out so far as Honolulu is concerned, for the opening of the Chamber of Commerce meeting was delayed a half hour until a quorum could be secured. Those present discussed the matter thoroughly and decided against the bill, and the National Chamber will be so notified by the secretary.

After hearing the telegram of George K. McClellan, the chamber's attorney at Washington and assistant secretary to Hawaii's delegate to Congress, in which he advises that absolutely no new harbor projects will be considered by Congress at this session, the members decided to recommend his retention at a salary of \$700 monthly on other legislative matters in which the territory is concerned, and the finance and audit committee could secure the funds necessary.

Though the thirteenth referendum of the national chamber—the Stevens bill—was voted against, a unanimous vote in the affirmative was given the fourteenth pertaining to federal promotion of vocational education throughout the country.

The reports of colonialities of the chamber will be printed in leaflet form, and the publication of the chamber annual will be deferred to some time after the close of the calendar year, 1916.

## ESTATE NAWELU KAHAKULANI.

NOTICE TO CREDITORS. The undersigned, having been appointed Administrator of the Estate of Nawelu Kahakulani, deceased intestate, late of Kahana, Oahu, hereby gives notice to all persons having claims against said estate to present the same to the undersigned at his office, Bank of Hawaii Building, Honolulu, within six months from the date of the publication of this notice or they will be forever barred.

Honolulu, March 26, 1916.  
Administrator Estate of Nawelu Kahakulani.  
6135—Mar. 30, Apr. 7, 14, 21, 28, 1916.

## SHAKESPEAREAN COSTUMES ARE GIVEN TRY-OUT

Instead of the usual rehearsal of "The Taming of the Shrew" last evening at the Kilohana Art rooms, the evening was spent trying on costumes. Honolulu playgoers and lovers of Shakespeare will be enthusiastic over the Italian courtiers, tradesmen, serving people, ladies and other characters arrayed in the minutest of three or four centuries ago. There are tights of many hues, trunks that catch the eye, tunics that are rich in color and material, and hats that make a happy contrast to the plain and severe head gear of men today.

Every member of the cast dressed in costume was subjected to the hypercritical scrutiny of some half dozen of the ladies who are helping to make the coming Shakespearean production the success it is bound to be. Among them were Mrs. Harry Macfarlane, chairman of the costumes committee, who has given unlimited time to this work for several weeks; Mrs. Walter F. Dillingham, president of the Footlights; Mrs. F. R. Day, the founder of the club; Mrs. Whitney, Miss Beatrice Castle and others. Here, too, the director, Will Lewers, is an incessant worker seeking out the finer points and the small details which mean so much to the whole success.

Rehearsals will be held in costume every night this week at the Kilohana rooms and one or two rehearsals in the Opera House next week before the first performance on Wednesday, April 26.

A most attractive little witch is eight-year-old Katherine Kilbourne, who takes the part of a page. Katherine is proud to think that she can be in the same cast in which her mother also has a part.

The prevailing color of each of the principal character costumes is: Petruchio (E. A. Donihitt), green; Hortensio (Harold Dillingham), deep blue; Lucentio (Young Corsethers), rich red; Baptista (G. C. Potter), blue; Gremio (Judge W. Whitney), a rich mixture in which red predominates; and the many others have a color scheme that fits the part and is true to the times in which the play within a play is laid.

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